Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Clyde W. LaRue, et al.,

Petitioners,

v.

United States of America, its Collectors of Internal Revenue Tax, John Wendorff, et al.,

Respondents.

Appendix A

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Clyde W. LaRue, et al.,
2745 S. 6th, # 105
Springfield, Illinois 62703
217-652-2555/217-529-1573

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

v. Case No. 95-2768

Collector of Internal Revenue

O R D E R

Clyde LaRue brought this action in the district court seeking the return of all income taxes that he has ever paid to the United States government. LaRue contends that he should be treated as a nonresident alien because he is a resident of his home state, Illinois, and not a resident of the United States. The district court dismissed the suit, and LaRue appeals.

LaRue's argument that he should be treated as a nonresident alien -- one that is offered occasionally by tax protesters -- is patently frivolous. See United States v. Hilgeford, 7 F.3d 1340, 1342(7th Cir. 1993); United States v. Sloan, 939 F.2d 499, 500-01(7th Cir. 1991), Cert denied, 502 U.S. 1060 (1992). Moreover, the district court had no jurisdiction to entertain his lawsuit. LaRue brought his claim under 26 U.S.C. § 7433(a), which allows taxpayers to seek damages against federal officers who recklessly or intentionally disregard the tax code when collecting taxes. Before a plaintiff may bring suit under § 7433, he must first exhaust his administrative remedies. 26 U.S.C. § 7433(d)(1). This exhaustion requirement is jurisdictional. Venen v. United States, 38 F.3d 100, 103 (3d Cir. 1994); Conforte v. United States, 979 F.2d 1375, 1377 (9th Cir. 1992).

The district court noted that because

LaRue was seeking a refund of his taxes, his suit should perhaps be construed as one under 26 U.S.C. § 7422 (the tax refund statute) rather than § 7433. The tax refund statute contains an exhaustion requirement as well: 26 U.S.C. § 7422(a) specifies that no taxpayer may file suit under the section without first making an administrative request for a refund. As is the case with § 7433, the exhaustion requirement of § 7422(a) is jurisdictional. See Commissioner of Internal Revenue v. Lundy, 116 S. Ct. 647, 651 (1996); Goulding v. United States, 929 F.2d 329, 332 (7th Cir. 1991), cert denied, 506 U.S. 865(1992).

The only potential evidence of exhaustion presented by LaRue is a document entitled "Second Codicil,: with two attachments: an affidavit, and a document titled "Constructive Notice of Nontaxpayers." See plaintiffs exhibit A. Even if LaRue sent these documents to the IRS, they do not contain the necessary information to qualify as an administrative claim under either § 7422 or § 7433. See 26 CFR § 301.6402; 26 CFR 301. 6402-3; 26 CFR 301.7433-1. Thus, LaRue failed to exhaust his administrative remedies, and the district court lacked jurisdiction over his lawsuit.

In addition to challenging the merits of the district court's decision, LaRue argues that we should remand the case because the district court failed to rule on a motion filed by the plaintiffs on May 22, 1995. The May 22 motion was a response to the district court's order of May 8, 1995, which directed the plaintiffs to show cause why Rule 11 sanctions should not be imposed for pursuing a frivolous action. The district court considered the plaintiffs' response and, on June 21, 1995, issued an order imposing sanctions. Thus, LaRue's claim that the district court failed to consider the May 22

motion is groundless.

Finally, the government filed a motion requesting sanctions against LaRue for bringing a frivolous appeal. See Fed. R.App.P. 38. The motion was filed in a separate notice, as required by Rule 38. LaRue filed a response requesting sanctions against the government. rule 38 sanctions are appropriate if an appeal is brought with no reasonable expectation of success and for the purpose of "delay, harassment or sheer obstinacy." A-Abart Electric Supply, Inc. v. Emerson Electric Co. 956 F.2d 1399, 1407 (7th Cir.) cert denied, 505 U.S. 867 (1992). LaRue brought this action without first exhausting his administrative remedies, in clear violation of §§ 7422 and 7433, and his argument that he is not subject to the tax laws of the United States is patently frivolous. His appeal raises no good faith argument that the district court erred in dismissing his case. Thus, it appears to us that sanctions against LaRue are appropriate. The district court's judgment dismissing LaRue's suit is AFFIRMED. LaRue's motion for sanctions against the government is DENIED. Pursuant to Rule 38, LaRue is ordered to pay $ 1,500.00 to the appellee, the United States of America, for bringing a frivolous appeal.

Decided September 3, 1996

Signed: Walter J. Cummings, Circuit Judge
Wilbur F Pell, Jr., Circuit Judge
Joel M. Flaum, Circuit Judge

COMPLAINT

JURISDICTION

This is a Civil Claim for Damage action for certain unauthorized collection actions by the United States, et al., as well as those named and unnamed individuals within and without their official capacity employed and hidden by United States, et al. The 16th amendment to the United States Constitution in no way authorizes revocation of the 13th amendment, whatsoever.

This court has jurisdiction pursuant to 28 U.S.C, section 1340, 26 U.S.C. section 7433. Treasury Claims pursuant to 26 CFR 301.7433 have been duly filed by all Plaintiffs. No administrative remedy exists within any other statute for purposes of this action except at 26 U.S.C. 7433. No decision was presented by the Defendants in opposition to said Claims, whatsoever. The Sovereign Immunity of the United States is officially waived pursuant to the Defendants' decision to remain silent for a period of six months as specified at 26 CFR 301.7433-1(d)ii and therefore judgement is assured.

THE PARTIES

1. For purpose of the Federal Income Tax, Plaintiffs Clyde W. LaRue, et al., are members of a class of people (U.S. Citizens, Residents Aliens, and/or Non-resident Aliens) who at no time during the taxable year are engaged in a trade or business within the United States, and are so defined at 26 CFR 1.871-1(b)(i). All U.S obligations received by the Petitioners are gross securities defined at 26 U.S.C. 165(g) from sources without the U.S.

2. On information and belief, Defendants United States, et al., are acting as agents of a foreign principal and not agents of the United States Government. The Defendant United States has employed and or devised schemes (hereinafter referred to as scheme) which purports to compel the voluntary compliance of the Plaintiffs with respect to the 16th amendment to the United States Constitution [codified at 26 U.S.C]. Said scheme purports to be successful upon the United States receiving a 1040 U.S. Individual Income Tax Return from the Plaintiffs which by label "elects" the Plaintiffs to be treated as subjects of the Internal Revenue tax.

3. On information and belief, Defendants named individually are in part, acting as Officers, Agents, Special Agents, or Employees of the United States Government in concert with others for the purpose of compelling the "scheme" implemented as their belief as to what the United States laws require. Fraud, coercion, fear and extortion are instruments of deception used by these Defendants for the purpose of compelling their "scheme".

4. On information and belief, Defendants individually are acting in part, outside their official capacity for the purpose of compelling their "scheme" and as such are personally liable for their conduct to the Plaintiffs. The Plaintiffs are unaware of any Law which would authorize acts against the free will of the Plaintiffs due to the substantial effect of the 13th amendment.

5. On information and belief, the 13th amendment is conclusive and remains without exception. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all beneficiaries to the 13th amendment. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all potential targets of the "voluntary compliance scheme".

NATURE OF CLAIM

6. Plaintiffs bring this action pursuant to 26 CFR 1.6013.6(b) and 1.871-10(d), thereby "electing" to revoke all 1040 Form elections to be treated as "residents" of the United States and to "treat real property income as effectively connected within the United States". Plaintiffs' claim for damages arose from fraud, coercion, and fear of the Defendants, thereby creating a mistake of law on the part of the Plaintiffs (See Exhibit A). The Defendants by supposed Sovereignty, have confined the Plaintiffs into **INVOLUNTARY SERVITUDE** in violation to the Thirteenth Amendment to the United States Constitution.

7. The amount of Judgement Damage award claimed is One Million Dollars of value and the direct economic damages sought is Twenty Million Dollars of value per each Claimant. The Defendants remain without opposition to Plaintiffs' Treasury Claims, thus the United States agrees for judgment in favor of Plaintiffs. (26 U.S.C. 7433(b). Exhaustion of all Administrative Remedies (26 U.S.C. 7433(d)1) has occurred, consent to suit exists within said record, and thus the United States sovereign immunity is waived pursuant to this action.

8. On May 8, 1995 in LaRue, et al., v. United States of America, 95-3036 (7th Cir. 95-2768, 96-1827, **AFFIRMED September 3, 1996**) this Court Ordered LaRue, supra, dismissed for Lack of **Subject Matter Jurisdiction, and for Failure to State a Claim for which relief can be Granted** (Fed. R. 12(b)1 and 12(b)6).

9. In LaRue, Supra, the Court relied upon the Defence of the United States which showed Plaintiffs' failure to file Treasury Claims as a means to which LaRue, supra ought be dismissed. The Court found consent to this action did not exist. The Court found no evidence of any waiver of the United States sovereign immunity.

10. The Court, in LaRue, supra, found that Treasury Claims pursuant to 26 CFR 301.7433 would allow the court proper Subject Matter Jurisdiction, and thus all Claims for relief should be granted. On September 3, 1996, the 7th Circuit Court AFFIRMED this Court's decision. This action was dismissed **without prejudice.**

BACKGROUND

11. In 1865, the 13th Amendment was adopted to the United States Constitution, signed and authorized by the President of the United States at that time, Abe Lincoln. The 13th amendment states:

> "Neither slavery nor involuntary servitude...shall exist in the United States or any place subject to their jurisdiction..."

12. On information and belief, Congress has jurisdiction over all things subject to their jurisdiction.

13. On information and belief, Congress passed the Corporation Income Tax Act of 1909. This act is thus subject to the Jurisdiction of the United States.

14. On February 25, 1913, Philander C. Knox, Secretary of State of the United States of America, published in the PRIVATE LAW of the UNITED STATES OF AMERICA by the SIXTY-SECOND CONGRESS, 1911-1913, on page 1785, his proclamation that the Sixteenth (16th) Amendment had been ratified by the states, thereby authorizing Congress to tax income under the Corporation Income Tax Act of 1909 on Federal Corporations (Subjects of Congress).

15. On information and belief, the Supreme Court of the United States ruled that: "This Amendment does not extend the taxing power to new subjects, ----". BRUSHABER v. UNION PACIFIC R. CO., 240 U.S. 1, 60 L.ed 493, 36 S. Ct. 236; STANTON v. BALTIC MINING CO., 240 U.S. 103, 60 L. ed 546, 36 S.Ct 278. The term "taxpayer" is defined at 26 USC[1988] 7701(a)(14) as any person **subject** to the Internal Revenue tax.

16. On information and belief, Congress passed 26 U.S.C. section 6013(a)(1) which states that "no joint return shall be made if either the husband or the wife at any time during the taxable year is a nonresident alien;".

17. On information and belief, Congress also made provision at 26 U.S.C. sec. 6013(g)(h) for a nonresident alien to "elect" to be treated as a resident of the United States (subject to Congress). Thus, the voluntary nature of the Federal Income Tax comes into play.

18. On information and belief, Plaintiffs are unaware of any constitutional authority for Congress or any part of the federal government to make any adhesion contract that would take away the sovereignty of the people or states of the Union. Therefore, the Defendant's reliance upon writing and/or making of "word-of-art" definitions in statutes and/or regulations that entrap the sovereigns is clearly unconstitutional. Methods promoted by Congress that seek the voluntary election of a People in procuring subject status with the United States [**26 U.S.C. 7701(A)(14) "taxpayer defined"; "the term taxpayer means any person subject to the Internal Revenue tax"**], should and is clearly only held by the United States at the discretion and meaning of the term voluntary subjection (**servitude**). Once "taxpayers" elect to revoke said voluntary election (servitude), said People are no longer considered subjects to the Internal Revenue tax by **LAW**.

19. On information and belief, the Secretary also made provision, at 26 CFR 1.6013-6(b) for "An election under this section shall terminate if either spouse revokes the election"; and 1.871-10(d)(1) or (2) whereby a decision to revoke an "election" may be made with or without the consent of the Commissioner. Construction of the Statutes otherwise establishes **Congressional Acts of INVOLUNTARY SERVITUDE [Slavery] in direct violation to the 13th amendment.**

20. On information and belief, based upon the complexities of the tax Laws, Plaintiffs are unaware of any statutes, rules, or regulations which would compel the "voluntary compliance scheme"

employed by the plaintiffs to file any U.S. Individual Income Tax Returns. The United States enjoins such schemes in an attempt to further coerce Plaintiffs (People) into "voluntary servitude".

21. Servitude and subjection have synonymous meanings.

COUNT I

22. On information and belief, the Defendants have recklessly and intentionally disregarded the provisions of title 26 section 6013(g)(h), 871(d) and the regulations promulgated thereunder and have refused, by fraud, coercion, fear to allow the Plaintiffs their rights to revoke the original Forms 1040 "elections" for all tax years ab initio, pursuant to 26 CFR 1.6013-6(b) and 1.871-10(d)(1), which were obtained by the Defendants involving purported acts of a voluntary nature (SEE 2nd Codicil attached within Exhibit A.

23. The actions of the Defendants have been reckless and intentional, with no statute or regulation authority, and have caused and are causing the Plaintiffs to suffer Slavery, and much financial damage.

COUNT II

24. The Defendants, have in part, within their official capacities and in part without official capacities, consciously, knowingly and willingly placed each Plaintiff herein under involuntary subjection to the 16th amendment, in violation of the 13th amendment to the Constitution for the United States of America.

CONCLUSION

Wherefore, Plaintiffs Clyde W. LaRue, et al, request that this court enter judgement in its favor and against the Defendants and hereby claim actual, direct economic damages as a proximate result of the reckless and/or intentional actions of the Defendants, pursuant to exhaustion of all administrative remedy pursuant to 26 U.S.C. § 7433(d)1. Judgement according to Treasury Claims 26 CFR 301.7433 is justifiably adequate.

SEE SIGNATURE PAGE LIST ATTACHED

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

Clyde W. LaRue, et al.,
Filed January 14, 1997

v. No. 96-3270

United States of America, et al.,

ORDER

Richard Mills, District Judge:

This cause is before the Court on Defendants' Motion to Dismiss.

On November 29, 1996, the United States, acting on behalf of the Defendants, filed a motion to dismiss this case for failure to state a claim upon which relief may be granted. Plaintiff have filed no response to that motion.

As the Court noted in an earlier order, this is the second tax protest lawsuit Clyde W. LaRue and his colleagues have filed in this Court within two years. The Court dismissed the first lawsuit as frivolous and imposed sanctions on the Plaintiffs under Federal Rules of Civil Procedures 11. Clyde W. LaRue appealed and the United States Court of Appeals sanctioned him for filing a frivolous appeal.

Plaintiffs make essentially the same claims in this lawsuit as they did in the lawsuit they filed in 1995. Specifically, Plaintiffs claim that they are exempt from federal income tax because the State of Illinois is not a "state" as defined by Congress in the Internal Revenue Code.

Rather, they argue that Illinois is a member of the "union." Thus, according to their convoluted reasoning, since Illinois is not a state for federal income tax purposes, then they are "non-resident aliens" and exempt from federal income taxes. In a new twist, Plaintiffs also claim that they are the victims of involuntary servitude imposed in violation of the Thirteenth Amendment to the United States Constitution.

Plaintiffs argue that they are exempt from federal income tax because they are non-resident aliens. Yet they concede that they are residents of the state of Illinois. Thus, Plaintiffs' claim to be non-resident aliens is absurd on its face and warrants no further discussion. See e.g. United States v. Hilgeford, 7 F.3d 1340, 1342 (7th Cir. 1993) ("The defendant in this case apparently holds a sincere belief that he is a citizen of the mythical 'Indiana State Republic' and for that reason is an alien beyond the jurisdictional reach of the federal courts. This belief is of course, incorrect."); United States v. Sloan 939 F2d 499, 500 (7th Cir. 1991) (Plaintiff contends "that he is not a citizen of the United States, but rather, that he is a freeborn, natural individual, a citizen of the State of Indiana...This strange argument has been previously rejected as well.") Lovell v. United States, 755 f.2d. 517, 519 (7th Cir. 1984)

Plaintiffs' claim of involuntary servitude is likewise absurd on its face. The Thirteenth Amendment to the United States Constitution provides that "[n]either slavery nor involuntary servitude shall exist within the United

States. Plaintiffs offer nothing in their Complaint, and offer no response to Defendants' Motion to Dismiss, from which they might establish that they are slaves or otherwise subject to involuntary servitude. Taxes are not a symbol of involuntary servitude. After all, "[t]axes are what we pay for civilized society..." Companis General de Tabacos de Fillipinas v. Collector of Internal Revenue, 275 U.S. 87, 100 (1927) (Holmes J., dissenting). The hallmark of civilized society (for which taxes are paid) is freedom, the antithesis of slavery.

The Court finds that Plaintiffs' claims are without any basis in law and must, therefore, be dismissed. Plaintiffs' Complaint is fraught with procedural and jurisdictional deficiencies (some of which the Court noted in its Order of December 9, 1996) but the Court will not waste its time discussing procedure when, at its core, this a meritless tax protest action.

As in LaRue v. Collector of Internal Revenue, No. 95-3036 (C.D. Ill., filed Feb.2, 1995), the Court is inclined to impose sanctions upon Plaintiffs under Federal Rule of Civil Procedures 11. As instructed below, Plaintiffs shall show cause, if any exists, why they should not be sanctioned pursuant to Federal Rules of Civil Procedures 11(b)(2) and 11(b)(3) for filing a frivolous complaint.

Ergo, The United States' Motion to Dismiss (d/e 32) is Allowed. This cause is DISMISSED with prejudice; Plaintiffs are to bear all costs of this action.

Plaintiffs' motion to strike and for summary judgment (d/e 35 and d/e 36 are DENIED as MOOT.

Plaintiffs are ordered to show cause

in writing by January 30, 1997 why they should not be sanctioned pursuant to Federal Rules of Civil Procedures 11.

Entered January 7, 1997, for the Court.

Signed Richard Mills

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al March 28, 1997

No. 97-1635 v.

United States of America, et al.,

O R D E R

A preliminary review of the short record indicates that the order appealed form may not be a final appealable judgement within the meaning of 28 U.S.C. § 1291.

A notice of appeal filed before the district court issues its ruling on a timely Rule 59 Motion is ineffective until the order disposing of the motion is entered on the district court's civil docket. Fed.R.App. P. 4(a)(4)

In the present case, one of the plaintiffs filed a motion for relief from judgment on January 29, 1997. this may be a timely Rule 59 motion. See Charles v. Daley, 799 F.2d 343, 347(7th Cir. 1986). As such, this appeal may be premature, because it appears that the district court has not disposed of the motion and entered its order on the district court's civil docket. Accordingly,

IT IS ORDERED that appellants shall file, on or before April 8, 1997, a brief memorandum stating why this appeal should not be STAYED pending the entry of the order disposing of the motion. A motion for voluntary dismissal pursuant to Fed.R.App.P. 42(b) will satisfy this requirement. Briefing shall be suspended pending further court order.

NOT SIGNED BY ANY CIRCUIT JUDGES

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. May 27, 1997

United States of America

Upon consideration of : #1) JURISDICTIONAL MEMORANDUM, filed on April 15, 1997, by Appellant Clyde LaRue, in which the appellant indicates that their post-judgment motion has been denied,

IT IS ORDERED that briefing will proceed as follows:

1. The brief and required short appendix of the appellants are due June 23, 1997.

2. The brief of the appellees is due July 23, 1997.

3. The reply brief of the appellants, if any, are due August 6, 1997.

If appellants appeal from the denial of the post-judgement motion, they shall promptly file a motion to consolidate the appeals.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. September 8, 1997

United States of America, et al.,

ORDER

On September 3, 1996, we handed down an order disposing of plaintiff Clyde W. LaRue's first action seeking the return of all income taxes that he had paid to the United States. He contended that he should be considered a non-resident alien because he is a resident of Illinois rather than of the United States. In our order we held that plaintiff's argument was patently frivolous and ordered him to pay $ 1500.00 to the United States for bringing a frivolous appeal. Twenty three days later LaRue and 28 other individuals filed another complaint against the United States and others claiming that defendants recklessly and intentionally disregarded the various provisions of the code of federal regulations and regulations promulgated thereunder and "have refused by fraud, coercion, and fear to allow the Plaintiffs their right to revoke the original Forms 1040 'elections' for all tax years ab initio" and have placed the plaintiffs under involuntary subjection to the Sixteenth Amendment, in violation of the Thirteenth Amendment. Plaintiffs claimed$ 1,000,000.00 "judgment damages" plus economic damages of $ 20,000,000.00 per each of the 29 claimants.

On January 14, 1997, the district judge handed down an order granting the government's motion to dismiss with prejudice and ordering plaintiffs to show cause why they should not be sanctioned. Plaintiffs were claiming that they are "non-resident aliens" exempt from federal income taxes because Illinois is not a "state" as defined in the Internal Revenue Code but rather is a member of the "Union." Plaintiffs also were asserting that they are victims of involuntary servitude in violations of the Thirteenth Amendment. As the district judge pointed out, plaintiffs assertion that they are non resident aliens is absurd because they concede they are residents of Illinois. See United States v. Higeford, 7 F3d. 1340, 1342 (7th Cir. 1993); United States v. Sloan, 939 F.2d 499, 500-01 (7th Cir. 1991); cert. denied, 502 U.S. 1060 (1992); Lovell v. United States, 755 F.2d. 517, 519 (7th Cir. 1984)

The district judge also rejected plaintiffs' claim of involuntary servitude because plaintiffs have not established they are slaves or otherwise subject to involuntary servitude.

Therefore, the district court granted the government's motion to dismiss with prejudice and ordered plaintiffs to show cause why they should not be sanctioned. On March 17, 1997, plaintiffs filed a notice of appeal from the January 14, 1997, judgment.

The district court judgment dismissing this case and sanctioning LaRue should be affirmed. Plaintiff Clyde LaRue is dismissed from this appeal because he failed to pay $ 1500 in sanctions that we imposed upon him in our September 3, 1996, order.

Plaintiffs never filed an administrative claim for a tax refund with the Internal Revenue Service so that the district court did not acquire jurisdiction over their claim for a refund of federal income taxes. See Section 7422(a) of the Internal Revenue Code.

Insofar as plaintiffs are seeking damages on the grounds that the government violated their constitutional rights, the government has not waived its immunity with respect to such a suit.

Finally, the complaint was subject to dismissal for failure to state a claim. Plaintiffs have based their claim for damages on the grounds that as non-resident aliens they are not subject to tax. Such allegations are patently frivolous and justify the district court in planning to impose sanctions against them for bringing a wholly baseless action.

The January 14, 1997, judgment is affirmed.

UNITED STATE COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. September 9, 1997

United States of America, et al.,

O R D E R

On consideration of the "Motion to Consolidate" filed by Plaintiffs-appellants on June 23, 1997.

IT IS ORDERED that the motion is DENIED.

NOT SIGNED BY ANY CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al., Filed October 23, 1997

Case No. 97-1635 v.

United States of America, et al.,

PETITION FOR REHEARING

The appellants, Clyde W. LaRue, et al., petitions the court for rehearing pursuant to Federal Rules of Appellate Procedures (hereinafter referred to as FRAP) Rule 35 and Rule 40.

QUESTIONS PRESENTED

1. Is appellants case a "successive appeal" as defined in Operating Procedures Rule 6(b).
2. Should same three Judges whom determined original record of 95-2768 involving some of the appellants be appointed to decide facts herein involving other appellants in 97-1625?
3. Did District Court incorrectly construe facts of case?
4. Did Judges Cummings, Pell,Jr. and Flaum incorrectly decide the facts in this case which distinguish 97-1635 from 95-2768?
5. Did Appellants exhaust their administrative remedies prior to commencement of 97-1635 pursuant to 26 U.S.C. § 7433?
6. Does claims that appellee is construing Federal Reserve notes received by appellants as securities of value, when no such value attends to such securities,

sufficient to state a claim for which relief can be granted.

7. Did Court error in dismissing Clyde W. LaRue?

BACKGROUND

On February 2, 1995, some of the appellants filed a complaint seeking a "refund" or "return" of all improperly collected taxes. In general, plaintiffs' claimed that they were Citizens of Article IV, Section 3, cl. 1 Illinois. Plaintiffs' believed that they had been improperly treated by the United States on grounds that the United States was construing its enumerated authority beyond the scope of the Constitution. In March of 1995, the defendant United States, represented by Gerald H. Parshall, Jr. filed a Motion to Dismiss pursuant to the Courts not having subject matter jurisdiction. On May 8, the District Court, Judge Mills, Granted the defendant's Motion to Dismiss because plaintiffs' failed to **exhaust their administrative remedies**. Plaintiffs' appealed and on March 21, 1996, the Appellate Court of Cummings, Pell, Jr. and Flaum issued an order dismissing all of the appellants in 95-2768 on grounds that appellant LaRue was the only one to sign the "Notice of Appeal."

On April 2, 1996, docket # 77, all other appellants originally in 95-2768 quickly filed an "Amended Notice of Appeal" wherein the apparent deficiency addressed by the Court in its order of March 21, 1996 was perfected. This amended notice of appeal created a new district court case number which was not addressed in this Court's decision in 95-2768 nor has such case number received any attention.

Beginning in March of 1996, and realizing that exhaustion of remedy appeared to be a real issue with the judiciary, appellants, each of them, filed a treasury claim pursuant to 26 CFR 301.7433 on grounds that this seemed to be the administrative remedy dealing with 26 U.S.C. § 7433 claims against the United States. The district court and this Court had previously misconstrued plaintiff's complaint in attempting to compare plaintiffs' language of its' complaint to that of a "refund" action pursuant to 26 U.S.C. § 7422. This was partly due to semantics and partly due to the defendant perfecting confusion on the judiciary **intentionally.**

Appellants in 95-2768 and other appellants also contained in 97-1635 began the faithful attempt to accomplish administrative exhaustion even though some appellants were involved in an ongoing appeal in case # 95-2768. The rationale used was that appellants believe that they have been wronged and deserve for the allegations of their complaint to be construed as true until proven otherwise and that a administrative procedure was not going to prevent final adjudication. Appellants, pursuant to 26 CFR. 301.7433 and 26 U.S.C. § 7433(d)(1), prior to it's amendment, were allowed to be maintain an action pursuant to 26 U.S.C. § 7433(a) upon being construed by the Court to have exhausted their administrative remedies pursuant to 26 CFR 301.7433-1(d)(2)(ii), that is "the date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section."

Appellants' six months from March of 1996 was due to expire in mid September of 1996. An option the Appellees had was to render a decision on appellants claims prior to the six months expiration at 26 CFR 301.7433-1(d)(2)(i) which would likewise allow appellants action to be maintained in any federal district court if appellants were unhappy with appellees decision. Knowing this, however, appellees decided to remain silent with regard to appellants claims filed in March of 1996, thus invoking 26 CFR 301.7433-1(d)(2)(i) jurisdiction.

On September 3, 1996, this Court ruled in 95-2768 that the district courts order of May 8, 1995 and June 21, 1995 were correct because plaintiff[s] "must first exhaust hi[s] administrative remedies. 26 U.S.C. § 7433(d)(1). This exhaustion requirement is jurisdictional."

This Court went on to say "the only potential evidence of exhaustion presented by LaRue is a document entitled "second codicil, with two attachments....they do not contain the necessary information to qualify as administrative claim under either... § 7433. See 26 CFR § 301.7433-1." LaRue v. Collector, 95-2768.

On September 26, the appellants herein instigated this action against the United States and named individuals, whom part of the time were employed by the United States and part of the time were within their private capacities, sued individually and officially, after having exhausted their administrative remedies pursuant to 26 CFR 301.7433-1. See Plaintiffs district court exhibit "A."

Upon the expiration of 20 days after perfected notification upon individual characters therein named, appellants' moved for Default Judgement on grounds appellees silence extending from March of 1996, was continuing, as thought by appellants would be the case.

On November 27, 1996, appellees qualified counsel herein, filed a convoluted motion which included six different types of moves; 1) Motion to Dismiss; 2) Motion for Injunction; 3) Suggestion of Sanctions; 4) Response to Default Request; 5) Request for other Relief; 6) Together with legal discussion on all points. At no time did the Appellee request for plaintiffs' complaint to be dismissed on grounds plaintiffs' "case failed to state a claim upon which relief may be granted." District Court Order of January 14, 1997.

Within 14 days, appellants filed a Motion to Strike Appellees six-way motion for numerous reasons. The most important one was that it failed to say anything about the appellants claims therein now filed and exhausted. No request was made by the appellee to dismiss plaintiffs' claim for failure to state a claim to which relief can be granted. No request was made by the appellee to dismiss plaintiffs' case for failure to state a claim upon which relief can be granted as the district court stated within its order of January 14, 1997, 959 F.Supp. 957(CD ILL. 1997). This Court could not identify on [a]ny one single page out the six-way motion, which liberally suggested such a move was requested. Appellees requested the district court attach their Motion to Dismiss filed in 95-3036 to which some

appellants were not a party with 96-3270.

On September 8, 1997, this Court Ordered that "this successive appeal has been submitted to the original panel under operating procedures(6)(b)." Appellants object to this Court's determination that appellants new case should be considered by the same panel under the successive rule procedure. This case is not successive and does not contain the same parties, the same evidence, the same jurisdiction and no comparable decision could be reached. There are no doubt some comparisons but none that warrant a successive appeal determination.

The district court, amidst appellants objections, continues to misconstrue appellants as residents of illinois. The Court continues to find that appellants' "concede that they are residents of Illinois." Why is the Court making such a big deal about whether or not the Appellants allege they are non-residents? This is an issue of fact which if any disputes should arise it should not be by the district court but by the parties opposing such allegations. Appellants have not conceded this fact and are continuing there objection herein. Appellants are either residents, non residents or citizens. The Court keeps asserting that appellants concede they are residents of illinois but the Courts will not identify the particular facts which support its conclusion. This conduct is evasive, arbitrary and capricious and clearly unconstitutional.

The district court also rejected plaintiffs' claim of involuntary servitude because plaintiffs have not established they are slaves or otherwise subject to

involuntary servitude. What?

The Court also decides that "Plaintiffs' never filed an administrative claim for a tax refund with the Internal Revenue Service so that the district court did not acquire jurisdiction over the claim for refund of federal income taxes." Plaintiffs' never filed any "claim for refund of taxes" pursuant to 26 CFR 301.7422. This decision is preposterous! It is very difficult to continue to request for a rehearing maintaining respect for judiciary, if the Court deciding the request is going to misconstrue the facts of this case in comparison to the misconstrued findings of Judges Cummings, Pell, Jr. and Flaum.

Hello, has anyone read this document this far. If you have then you are very aware of the abuse that the appellants are being afforded from this Court. It appears that this rehearing request is a step required to be considered for the Supreme Court. You can help your Country by reconsidering this decision upon its merits and not upon the misconstruction of certain parties and non-parties.

ARGUMENT

The President signed an amendment to the taxpayer's bill of rights on July 30, 1996, which allowed for actions for damage claims to be maintained even though administrative remedies were not exhausted. 26 U.S.C. § 7433(d)(1) as amended. This is a inherent waiver of sovereign immunity regardless of any claims being filed pursuant to § 7433.

This Courts statements regarding appellants "seeking damages on the ground that the government violated their constitutional rights, the government has not waived its immunity with respect to such a suit." This decision alone is false and the Seventh Circuit Court is very aware of this fictitious conclusion.

Plaintiffs' have not based their claims for damages on the grounds that as non-resident aliens they are not subject to tax. Plaintiffs' based their claims for damages on grounds that "all U.S. obligations received by the Petitioners (Plaintiffs) are gross securities defined at 26 U.S.C. § 165(g) from sources without the United States. Plaintiffs' Complaint at Pg. 3 Prg. 1

In this Courts order of September 8, 1997, the Court characterized appellants claims that they claimed "$"1,000,000 "Judgement Damages" plus economic damages of "$"20,000,000 per each claimants. Appellants object to this "$" as not indicative of appellants claims. Appellants do not know what "$" means. Appellants requested One Million Dollars of value as Judgement Damages and Twenty Million Dollars of value as economic damages. Nice try!

Finally with regard to Sanctions, no one, including Clyde LaRue, received any advance notice that the appellate court was going to impose sanctions in 95-2768. Appellate record indicates that attempts to discharge such debt have not been accepted until after this appeal was instituted. The appellate record does not indicate that party Clyde W. LaRue has not paid prior sanctions imposed by this Court. No evidence exist in support of such finding.

On the other hand, evidence does exist that party Clyde W. LaRue has attempted to discharge such debt. No show cause motion was filed by the Circuit Court notifying appellants that the Court was considering sanctions in 95-2768. This violates due process clause of the Fifth Amendment.

Appellants, after being notified of the Courts posture with regard to the numerous motions struck by the Court between January 14, 1997 and March 20, 1997, because the district court could not make up its mind on how it wanted certain pleadings filed, filed a motion to consolidate the record for appeal involving the Order of January 14, 1997 with that of April 2, 1997. This was after this Court noticed the appellants that if they intend to appeal the sanctions, they must file a motion to consolidate. The record clearly shows the appellants intent and this Court should carefully investigate the issues within 96-C-3270.

Therefore, appellants, Clyde W. LaRue, et al., request the Court grant this Petition for Rehearing on the merits of Appellants original Complaint, reverse this Courts order of September 8, 1997, this Courts sanctions on September 3, 1996, and all other pleadings this record seems clearly to contradict as well as assign this case to a new three judge panel.

Respectfully Submitted
SEE SIGNATURE PAGES

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. Filed October 23, 1997

United States of America, et al.,

PETITION FOR REHEARING

The appellants, Clyde W. LaRue, et al., petitions the court for rehearing pursuant to Federal Rules of Appellate Procedures (hereinafter referred to as FRAP) Rule 35 and Rule 40 on its order of September 9, 1997, wherein the Court arbitrarily denied appellants "Motion to Consolidate." Appellants have pending a previously filed "Petition for Rehearing" which was filed involving the Order of this Court "affirming" the district court's orders of January 14, 1997 and April 2, 1997.

QUESTIONS PRESENTED

1. Should Motion to Consolidate be considered prior to Circuit Court entering order and judgement?
2. Should same three Judges whom determined original record of 95-2768 involving some of the appellants be appointed to decide facts herein involving other appellants in 97-1625?
3. On what grounds did Circuit Court "Deny" appellants Motion to Consolidate filed June 23, 1997?

BACKGROUND

On September 3, 1996, this Court ruled in 95-2768 that the district courts order of May 8, 1995 and June 21, 1995, were correct because plaintiff[s] "must first exhaust hi[s] administrative remedies. 26 U.S.C. § 7433(d)(1). This exhaustion requirement is jurisdictional."

This Court went on to say "the only potential evidence of exhaustion presented by LaRue is a document entitled "second codicil, with two attachments....they do not contain the necessary information to qualify as administrative claim under either... § 7433. See 26 CFR § 301.7433-1." LaRue v. Collector, 95-2768.

On September 26, 1997,the appellants herein instigated this action against the United States and named individuals, whom part of the time were employed by the United States and part of the time were within their private capacities, sued individually and officially, after having exhausted their administrative remedies pursuant to 26 CFR 301.7433-1. See Plntfs district court exh. "A."

Upon the expiration of 20 days after perfected notification upon individual characters therein named, appellants' moved for Default Judgement on grounds appellees silence extending from March of 1996, was continuing, as thought by appellants would be the case.

On November 27, 1996, appellees qualified counsel herein, filed a convoluted motion which included six different types of moves; 1) Motion to Dismiss; 2) Motion for Injunction; 3) Suggestion of Sanctions; 4) Response to Default Request; 5) Request for other Relief; 6) Together with legal discussion

on all points. At no time did the Appellee request for plaintiffs' complaint to be dismissed on grounds plaintiffs' "case failed to state a claim upon which relief may be granted." District Court Order of January 14, 1997.

Within 14 days, appellants filed a Motion to Strike Appellees six-way motion on numerous grounds. The most important ground was that it failed to say anything about the appellants claims therein now filed and exhausted. No request was made by the appellee to dismiss plaintiffs' claim for failure to state a claim to which relief can be granted. No request was made by the appellee to dismiss plaintiffs' case for failure to state a claim upon which relief can be granted as the district court stated within its order of January 14, 1997, 959 F.Supp. 957(CD ILL. 1997).

Appellants, after being notified of the Courts posture with regard to the numerous plaintiffs' motions struck by the Court between January 14, 1997 and March 20, 1997, because the district court could not make up its mind on how it wanted certain pleadings filed, docketed a motion to consolidate the record for appeal involving the Order of January 14, 1997 with that of April 2, 1997. This was after this Court noticed the appellants that if they intend to appeal the sanctions, they must file a motion to consolidate. The record clearly shows appellants intent and this Court should carefully investigate the issues within 96-C-3270.

On March 28, 1997, this Court made a "preliminary review" of the short record" and issued an "O R D E R" which instructed the appellants to file a "Jurisdictional Memorandum" explaining why the Appellants'

Notice of Appeal was **NOT** "premature." The Court cited Charles v. Daley, 799 F.2d 343, 347 (7th Circuit 1986) in support of its allegation. As such, the Court said, "this appeal may be premature, because it appears that the district court has not disposed of the motion and entered its order on the district court's civil docket.

Accordingly, IT IS ORDERED that appellants shall file, on or before April 8, 1997, a brief memorandum stating why this appeal should not be **STAYED** pending the entry of the order disposing of the motion. Briefing shall be suspended pending further court order."

Obviously, the district court entered its order regarding sanctions on April 2, 1997, in direct compliance with this Courts order of March 28, 1997. Since this case was not properly disposed of at the time the appellants filed their "Notice of Appeal," the appellants, after suggestion by this Court, filed their Motion to Consolidate intending to encompass the docket through the April 2, 1997, district court order. The appellants did not file a "Jurisdictional Memorandum" on grounds the district court disposed of "thought to be" timely filed R. 59 motion prior to April 8.

Therefore, appellants, Clyde W. LaRue, et al., request the Court grant this Petition for Rehearing on the merits of Appellants original Complaint, reverse this Courts order of September 9, 1997, assign this case to a new three judge panel and reverse its decision involving appellants motion to consolidate, affording, in the alternative, at a bare minimum, why the Motion to Consolidate was decided as denied for appeal purposes.

Respectfully Submitted SEE SIGNATURE PAGES

UNITED STATE COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LaRue, et al.,

No. 97-1635 v. October 30, 1997

United States of America, et al.,

ORDER

On consideration of the petition for rehearing filed by plaintiffs-appellants on October 22, 1997, all of the judges on the panel have voted to deny rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

Signed by: Walter J. Cummings, Circuit Judge
Wilbur F. Pell, Jr, Circuit Judge
Joel M. Flaum, Circuit Judge

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK

February 27, 1998

Mr. Clyde W. LaRue, et al.,

Re: Clyde W. LaRue, et al.
v. United States, et al.
Application No. A-648

Dear Mr. LaRue:

The application for an extension of time within which to file a petition for a Writ of Certiorari in the above entitled case has been presented to Justice Stevens, who on February 27, 1998, extended the time to and including March 27, 1998.

Signed by the Clerk

Gail B. Johnson
Assistant Clerk